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In The

Supreme Court of the United States

BETHANY YOUNG,

Petitioner,

versus

CITY OF SULPHUR,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fifth Circuit erred as a matter of law and in fact violated the recent mandate of this Court in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097 (2000), when it affirmed a trial court's Rule 56 summary dismissal of a Title VII gender-based employment discrimination claim, a summary dismissal that: is predicated on the defendant's contested evidence of legitimate, nondiscriminatory reasons for the termination; rejects conflicting evidence offered by Bethany Young – conflicting evidence that includes an acknowledgement of gender-based discrimination against Young by one of the defendant's supervisory employees; and improperly deprived the jury of any opportunity to make a determination of discrimination *vel non*?

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PETITION FOR WRIT OF CERTIORARI

Bethany Young respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on August 8, 2000, affirming the trial court's Rule 56 summary dismissal of her Title VII gender-based employment discrimination claim.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is not reported. It is reproduced at Appendix A. The decision of the United States District Court for the Western District of Louisiana, also not reported, is reproduced at Appendix B. Neither court rendered any other rulings or reasons for judgment that are the subject of this petition.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on August 8, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

42 U.S.C.A. 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer –

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

A. Procedural History

Bethany Young filed this action against the City of Sulphur, Louisiana, and particularly its police department, alleging that the City terminated her employment in violation of Title VII, 42 U.S.C. §2000. Shortly before an April 2000 trial date, the City filed a Rule 56 motion asking the trial court to summarily dismiss the claims asserted by Bethany Young. Bethany Young filed an opposition to the motion and submitted, as part of that opposition, deposition testimony developed during discovery.

For reasons assigned, the trial court granted the City's motion for summary judgment and dismissed the claims asserted by Bethany Young. An appeal to the United States Fifth Circuit Court of Appeals, citing in part this Court's decision in *Reeves v. Sanderson Plumbing*

Products, Inc., 120 S.Ct. 2097 (2000), failed when that court affirmed the trial court's summary dismissal of Young's claims. This petition followed.

B. Background Facts

Bethany Young, a white female, twenty-four years of age, began her employment with the City of Sulphur on October 11, 1995. Bethany Young had elected some time earlier to pursue a career in law enforcement. In fact, she had enrolled at the local university, McNeese State University in Lake Charles, Louisiana, majoring in law enforcement, and through McNeese had even participated in an intern program that allowed her to work with deputies of the local sheriff. In the summer of 1995, Bethany Young submitted applications for employment to various local law enforcement entities, including the City of Sulphur. She accepted the first offer of employment – an offer received from Captain Keith Andrus with the Sulphur Police Department.

Bethany Young's employment with the police department in Sulphur lasted but eighty-nine days. It was tumultuous from the outset. She was told by superior officers that her mere presence at the physical facilities maintained by the department "made some of the male officers uncomfortable" – asserting that they, the male officers, could not speak the words they preferred to speak in the presence of Bethany Young because of her gender. Bethany Young was offered little or no formal training and, instead, this rookie officer was almost immediately assigned to a unit by herself and placed on an overnight or graveyard shift. Simply put, Bethany

Young was given a gun, a uniform, and a unit and then told to go to work. The formula for Bethany Young's employment was one destined for failure from the outset – and purposefully so.[1]

The City did not rest on the absence of any reasonable training program or even the resistance and dislike for a female officer expressed by fellow officers to dissuade Young from continuing her employment. The City, through officers in its department, aggressively undertook affirmative steps to ensure Bethany Young's career in law enforcement would end almost before it began. Bethany Young was repeatedly told that she was not properly following departmental procedures. When she expressed concern that she was not provided training or information needed to correct this problem and then sought the assistance of superior officers to remedy that concern she was charged with failure to properly follow the chain of command. The requested training and information was still withheld from Bethany Young.

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[1] An obvious question (and one argued at the trial court level by the City) is why the City would hire a female patrol officer if it intended that female officer to fail from the outset. Evidence developed during discovery but not part of the City's Rule 56 motion suggests that the City had been pressured for some time by federal agencies to alter its historical hiring preference for white male applicants. At trial, the jury would have considered evidence that the City intended to "prove" through Bethany Young's brief employment that none of the available applicants could succeed and thus were not "qualified." The trial court's decision not only allows that argument to the City but essentially adds its stamp of judicial approval to the argument.

Incredibly, Bethany Young was repeatedly chastised for having interaction with deputies of the local sheriff's office, an office with concurrent jurisdiction in the City of Sulphur. She received a formal reprimand from her superiors in the department when deputies from the local sheriff's office also responded to a call assigned to Officer Young by the Sulphur dispatcher. Young had not requested assistance. The deputies simply responded as a matter of routine procedure. Young's superiors and some of her fellow officers began to refer to her as a "khaki back lover" – a derogatory term taken from the khaki colored uniforms then worn by members of the local sheriff's department.[2]

And even these efforts to thwart Bethany Young's desire to succeed as a law enforcement officer were apparently not enough in the view of the City. When her superior officers discovered that at least some members of the Sulphur Police Department might be sympathetic to Bethany Young and were even offering to provide Bethany Young with guidance and answers to questions that she posed, those superior officers reacted quickly

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[2] Bethany Young's husband was employed by the local sheriff. There is evidence that Bethany Young suffered additional adverse employment action directly attributable to the person she dated and later married. The trial court stated that this testimony offered additional evidence that Young's mistreatment was not gender-based. The trial court's opinion notwithstanding, it certainly seems that adverse action based on Bethany Young's personal relationships outside of work is inherently gender-based, particularly in the absence of any evidence that male employees were similarly treated.

and harshly. One officer at the Sulphur department, Officer Patrick Johnson, acknowledged that he was chastised for assisting Bethany Young. When found assisting Officer Young, Johnson was taken aside by a superior officer, accused of having an illicit sexual affair with Young, asked just what his interest might be in helping Young if not sexual relations, and essentially convinced that he should never again assist Young. The warning worked; Officer Johnson never again openly provided any assistance or guidance to Officer Young.

The effect of these efforts by the Sulphur Police Department was exactly as the City intended, or almost. Bethany Young suffered repeated adverse employment action, adverse action that was exclusive to Young and based on her gender. But Bethany Young did not capitulate; she kept working to succeed.

Gender-based discrimination is rarely acknowledged in the evidence gathered in anticipation of trial in a Title VII claim. Not so here. The former assistant police chief for the Sulphur Police Department, David Fontenot, conceded in deposition testimony that Bethany Young had been subjected to resistance and opposition in her efforts to succeed at her job, resistance and opposition that was based on her gender.

In its motion, the City listed numerous shortcomings or failures on the part of Bethany Young that supposedly supported its decision to terminate her employment. Many of these are directly attributable to the efforts of her superiors to keep policies and procedures from Bethany Young; one was not. Early in her brief employment with the City, on November 5, 1995, Bethany Young

reported for her night shift despite an ongoing illness (flu symptoms) that had forced her to seek medical treatment and take prescription medications. Her immediate supervisor, Phil English, one of if not the main protagonist for Bethany Young, demanded that new hires show up for work. Indeed, English testified that he had listed missed work as a "pet peeve" in his initial conversations with Patrol Officer Young. Regardless, Bethany Young erred. She fell asleep in her unit while stopped at an intersection in the City of Sulphur and while on duty. Bethany was reprimanded but not terminated for this incident. To the contrary, Bethany Young's employment with the City of Sulphur continued for many weeks thereafter.

The actual decision to terminate Bethany Young came much later, on January 10, 1996. The timing is neither coincidental nor insignificant. Bethany Young was terminated on the eighty-ninth day of her employment. On the next day of employment, day ninety, Bethany Young would have been vested with the protections afforded by civil service.

The reason listed by the City for Bethany Young's termination was concocted at best, and in fact dishonest.[3]

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[3] It is undisputed that the reason listed for Bethany Young's termination at the time of the termination is the unattended vehicle on a public road discussed in the text above. The additional reasons that appear in the trial court's reasons for its decision were gathered and then offered by counsel for the City in support of the dismissal motion. The fact that these additional reasons for the termination were an after-the-fact effort by the City, evidence that surely would have been important to a jury, is not addressed in the trial court's decision.

Captain English maintained that the vehicle of an individual stopped and arrested by Officer Young for the offense of driving while intoxicated (an individual who was later released by Captain English not because he was not intoxicated but instead because his nephew was an officer with the police department in a nearby city) had been left on a public road. In fact English maintained that he was forced to move the vehicle later that same night. Officer Young absolutely denied that the vehicle was left on a public road and maintained instead that the vehicle was left in a parking lot. English's statements were not truthful. English could not have moved the vehicle to the parking lot because he never had possession of or access to the vehicle's keys. Confronted with the blatant impossibility of his statements, English could offer no explanation.

In truth, the proffered reason for the termination of Bethany Young was nothing more than a desperate excuse to force Bethany Young out of the department before she was afforded civil service protection. A strategy adopted only after earlier efforts to discourage Bethany Young had failed, and a strategy that has thus far proved successful.

In a final but telling event, Captain English, who was Young's direct supervisor and whose command Young had been severely criticized for circumventing during her employment, did not deliver the termination. Instead, the City brought Captain Andrus in to perform the termination. Why? The answer is exposed in the City's motion for dismissal: Andrus hired Young and the act of termination performed by Andrus allows the City to urge a legal defense relying on the presumption that an employee

fired by the same person who hired that employee has not suffered unlawful discrimination. A strategy that is also successful thus far.

REASON FOR GRANTING THE WRIT

- **The decision of the United States Court of Appeals for the Fifth Circuit is contrary to the recent decision of this Court in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097 (2000), and the Fifth Circuit has, therefore, erred as a matter of law.**

The decision of the Fifth Circuit affirms and thereby leaves standing a decision by the trial court that engages in the very analysis prohibited by this Court's decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097 (2000). That is, the trial court's decision is based on supposedly legitimate, nondiscriminatory reasons proffered by the City to support its decision to terminate Bethany Young. The trial court ultimately concluded that at least one of the three reasons offered by the City in its motion was sufficient. In reaching this conclusion, the trial court rejected competing evidence submitted by Young.

The analysis conducted by the trial court that led to its decision to grant a summary dismissal of Young's claims evidences the very analysis prohibited in *Reeves*. Although the *Reeves* analysis is set in the context of a post-trial motion for judgment as a matter of law, the decision of the trial court here to dismiss the claims

asserted by Bethany Young errs for the very same reasons. The trial court considered Young's *prima facie* showing of discrimination, observed that the City articulated legitimate, nondiscriminatory reasons for her termination, and then granted a summary dismissal. Thus, the trial court essentially weighed the evidence presented and made a factual determination that is simply not proper in the context of a Rule 56 motion for summary judgment.

The trial court notes that Young, in the face of a Rule 56 motion, must offer evidence to support her claim of unlawful discrimination. Certainly this is true. A plaintiff may not stand idly by once confronted by a Rule 56 motion for summary dismissal. But Bethany Young did not stand idle. To the contrary, she offered clear evidence consistent with the subsequent teaching of this Court in *Reeves* that simultaneously supports her claim and defeats, or should defeat, the defendant's motion for dismissal. And in fact a reading of the trial court's written reasons demonstrates that the dismissal is premised on the City's evidence of "legitimate, nondiscriminatory" reasons for the termination of Bethany Young as well as the trial court's own apparent belief that the City's stated reasons are credible and sufficient. Through this process, the trial court has improperly deprived Young of any opportunity to have the trier of fact, the jury, weigh and resolve the competing claims and conflicting evidence offered by the opposing parties. This result violates *Reeves*.

> Although intermediate evidentiary burdens shift back and forth under this framework, "[t]he ultimate burden of persuading the trier of

> fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Burdine, 450 U.S., at 253, 101 S. Ct. 1089. And in attempting to satisfy this burden, the plaintiff – once the employer produces sufficient evidence to support a nondiscriminatory explanation for its decision – must be afforded the "opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." Ibid.; see also St. Mary's Honor Center, supra, at 507-508, 113 S. Ct. 2742. That is, the plaintiff may attempt to establish that he was the victim of intentional discrimination "by showing that the employer's proffered explanation is unworthy of credence." Burdine, supra, at 256, 101 S. Ct. 1089. Moreover, although the presumption of discrimination "drops out of the picture" once the defendant meets its burden of production, St. Mary's Honor Center, supra, at 511, 113 S. Ct. 2742, the trier of fact may still consider the evidence establishing the plaintiff's prima facie case "and inferences properly drawn therefrom . . . on the issue of whether the defendant's explanation is pretextual," Burdine, supra, at 255, n. 10, 101 S. Ct. 1089.

Reeves, supra, at 2106.

In fairness to the trial court it is perhaps appropriate to note that the decision of this Court in *Reeves* was not rendered until after the trial court had rendered its decision. In fact, the *Reeves* decision was published during the appellate proceedings below and was first cited in Bethany Young's reply brief submitted to the Fifth Circuit. But the decision of the Fifth Circuit to affirm essentially without discussion the trial court's summary dismissal of Bethany Young's claim cannot be justified

under the ruling of *Reeves*. A closer look at the trial court's ruling itself confirms this very conclusion.

The trial court in its reasons for granting the City's motion for summary judgment began by acknowledging "three different reasons" listed by the City of Sulphur for the termination of Bethany Young. The trial court then suggests that one of the reasons offered by the City of Sulphur is not contested. The trial court is mistaken. Each of the three allegations asserted against Bethany Young in order to support the termination is contested. Specifically, the allegation that Bethany Young mishandled evidence is directly contested by the evidence that the City of Sulphur repeatedly blocked and denied the training and information requested by Bethany Young. Stated otherwise, the City's allegation is simply that Bethany Young did not know what it refused to let her know. That justification hardly supports the termination. Moreover, this analysis by the trial court is contrary to *Reeves* because it deprives the trier of fact of any opportunity to consider the plaintiff's evidence of discrimination and inferences drawn from that evidence.

Against the backdrop of *Reeves*, it is also important to recognize that the reasons for termination relied upon by the trial court were not the reasons offered by the City when it terminated Bethany Young. Instead, the specific and exclusive reason offered by the City when it elected to terminate Bethany Young was the traffic stop that occurred on the night of her termination. And even the trial court's decision acknowledges that this allegation is contested.

The analysis undertaken by the trial court improperly intercedes into the role of the jury and that violates the rule of *Reeves*. The trial court has, through the procedural vehicle of Rule 56, improperly substituted its own findings of fact for those of the proper fact finder: the jury. The decision of the Fifth Circuit to affirm this decision is likewise improper.

CONCLUSION

This Court spoke clearly in *Reeves* detailing the boundaries that limit the right of the courts to intervene in the work of the jury. Whether it occurs after the jury has spoken or prior to the jury's verdict, the intercession is improper if the procedural vehicle is used to resolve conflicting evidence that would otherwise be resolved by the jury. That is the result that has occurred here.

Frankly, the proper boundaries between the role of the court and the role of the jury have long since been recognized in other areas of the law. The *Reeves* decision stated clearly that the same rules and the same boundaries must be acknowledged and adhered to in the instance of discrimination in the workplace. A simple but important principle: the resolution, on one hand, of a showing by the plaintiff of a *prima facie* case and, on the other, evidence of a defense offered by the employer must reside with the jury at trial, not earlier nor later.

It is respectfully submitted that the United States Fifth Circuit Court of Appeals has repeatedly and seemingly almost as a matter of course upheld the summary dismissal of claims of employment discrimination. This

practice not only encourages but in fact teaches the district courts in its circuit to deal aggressively with these claims through summary rulings that disrupt the role of the jury. This Court's decision in *Reeves* teaches otherwise. Nonetheless, in the instance of Bethany Young's claim, the message has been missed. Bethany Young therefore pleads for this Court's intercession.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-30418
(Summary Calendar)

BETHANY YOUNG

Plaintiff-Appellant,

v.

CITY OF SULPHUR

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Louisiana
(97-CV-31)

(Filed Aug. 8, 2000)

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:*

In this suit alleging sex discrimination, pursuant to Title VII of the Civil Rights Act of 1964, as amended, Plaintiff-Appellant Bethany Young appeals the district court's grant of Defendant-Appellee's motion for summary judgment. Young was employed by the City of

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* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Sulphur on a 90-day probationary basis, and her employment was terminated before that temporary period expired. She alleges that her termination was the result of sex discrimination on the part of the police department. The City of Sulphur argues in response that her termination was the result of her inability to perform the requirements of her role as a police officer. Having carefully and fully considered the record and the briefs of counsel as well as the opinion of the district court, we are satisfied that summary judgment was properly granted, and we affirm the judgment of the district court for essentially the same reasons set forth in its comprehensive opinion.

AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

BETHANY YOUNG	:	**CASE NO. 97-0031**
VERSUS	:	**JUDGE TRIMBLE**
CITY OF SULPHUR	:	**MAGISTRATE JUDGE WILSON**

MEMORANDUM RULING

(Filed March 15, 2000)

Presently before the court is a motion for summary judgment and to recover attorney's fees, costs, and expenses [doc. 30] by defendant City of Sulphur. This motion is brought pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the following reasons, this court finds that the motion for summary judgment by the aforementioned defendants should be GRANTED and the motion for attorney's fees, costs, and expenses shall be DENIED.

I. FACTURAL BACKGROUND

Bethany Young went to work for the City of Sulphur Police Department for a 90 day probationary period. For her training Bethany Young was assigned to Captain English. On the 89th day of Young's tenure, she was fired. Defendants point to three different reasons why she was terminated.

First, Young had previously fallen asleep at an intersection on duty, while the car was in gear. Second, Young apparently mishandled evidence. Third, although disputed by Young, Captain English claimed that Young had not properly secured a vehicle after a traffic stop.

Young has filed suit and claims that she was fired because of her gender because the reasons given by the defendant were mere pretext. She also has alleged improper actions and the intentional infliction of mental and emotional distress.

II. LEGAL STANDARD

Rule 56(c) provides that "[summary] judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. F.R.C.P. 56(c) The movant bears the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings, depositions, and answers to interrogatories, admissions on file and affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); *Williams v. Adams*, 836 F.2d 958, 960 (5th Cir. 1988). Once a proper motion has been made, the non-moving party may not rest upon mere allegations or denials in the pleadings but must set forth specific facts showing the existence of a genuine issue for

trial. *Celotex Corp.*, 477 U.S. at 322-23, 106 S.Ct. at 2552-53; *Anderson*, 477 U.S. at 257, 106 S.Ct. at 2514-15; *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir.), *cert. denied*, 506 U.S. 825, 113 S.Ct. 82, 121 L.Ed.2d 46 (1992). Summary judgment is mandated if the non movant fails to make a showing sufficient to establish the existence of an element essential to her case on which she bears the burden of proof at trial. *Celotex Corp.*, 477 U.S. at 322, 106 S.Ct. at 2552.

The Supreme Court has noted that the summary judgment motion may be an appropriate avenue "to secure the just, speedy, and inexpensive determination" of a matter. *Celotex*, 477 U.S. at 327, 106 S.Ct. at 2555. Consistent with the concern for judicial economy, "the mere existence of a scintilla of evidence in support of the [non-moving parties'] position" is insufficient to defeat a properly supported motion for summary judgment. *Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512.

III. LEGAL ANALYSIS

Young alleges wrongful discharge, improper actions, and intentional infliction of emotional distress. This court will address the wrongful discharge first and address the improper actions and intentional infliction of emotional distress together.

A. Discriminatory Discharge

A prima facie case for discrimination requires that plaintiff show: 1) s/he is a member of a protected class; 2) she was discharged, either actually or constructively, or

suffered some other adverse employment action; 3) she was qualified to perform her job, and 4) she was replaced by a person outside the protected group. *See St. Mary's Honor Center vs. Hicks,* 509 U.S. 502, 113 S.Ct. 2742 (1993). Defendant's brief only addresses the issue as to whether or not plaintiff was qualified to perform her job.[1] Once a prima facie case is established, the burden shifts to defendant to provide legitimate, non-discriminatory reasons for the termination.

Defendant articulates three distinct reasons for the termination. First, Young fell asleep in a patrol car, at a busy intersection, with the engine running, and the transmission in gear. Second she was cited for failure to secure a vehicle of an arrestee. Finally, she was cited for mishandling evidence.

Young argues that she fell asleep because she was sick, on medication, and it was an overnight shift. She went to work because she understood Captain English to say that people shouldn't miss work because they were sick.[2] Young denies the allegations that she failed to secure the vehicle. No explanation is given for the mishandling of evidence by the plaintiff.

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[1] Neither party addressed whether or not Young was replaced by a man. It is troublesome that such a fundamental requirement is completely ignored by both parties.

[2] Captain English contends that people shouldn't miss work for "sickness" when they could come in, but chose not too. Examples given by Captain English are absences due to stubbing one's toe or missing a 12 hour shift for a headache that is gone in 30 minutes.

Since Young does not appear to contest the mishandling of evidence, this provides a legitimate non-discriminatory reason for terminating the plaintiff.[3] Additionally, even though plaintiff is disputing the first two reasons as pretexts for gender discrimination, Young fails to provide any evidence that the termination was *because of* her gender. The mere fact that she might have been wrongly terminated is not enough. Young must present evidence that she was wrongly terminated *because of* her gender.

In fact, Young, herself, provides a non-gender based reason why Captain English did not like her. In her deposition Young stated that Captain English did not like her because he did not like her spouse, Donald DeLouche, who worked for the Sheriff's department. Even if Captain English managed to get Young terminated, Young admits that Captain English's dislike of plaintiff stems from who her spouse was, not plaintiff's gender.

All other claims should be dismissed because Young has nothing more than thin threads of allegations. Assuming that Captain English did say the things alleged and had her terminated for the two false reasons, there is just not any proof that he did these things *because of* her gender.[4] He might have disliked her, but termination for

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[3] Although this court need not address the disputed reasons for discharge, this court notes that Young's "excuse" for falling asleep would not as a matter of law suffice. Not only did Young fail to do her job of protecting the people of Sulphur, but she endangered the safety of the people of Sulphur.

[4] Although plaintiff may argue that the reason for Young's dismissal is a question of fact, in this case this is not true. Young

dislike is not a cause of action. Unless he disliked and fired her *because* she was a woman. Therefore, because no evidence has been presented to raise a question of fact, this court shall grant defendant's motion for summary judgment. However, this court shall deny an award of attorney's fees, costs, and expenses.

B. Other Claims

Recently the Fifth Circuit has affirmed the granting of summary judgments when stray marks were the basis for the allegations of discrimination. *See generally Streeram vs. Louisiana State University Medical Center-Shreveport*, 188 F.3d 314 (5th Cir. 1999); *Boyd vs. State Farm Ins. Co.*, 158 F.3d 326 (5th Cir. 1998); *Brown vs. CSC Logic*, 82 F.3d 651, 655 (5th Cir. 1996); *Anderson vs. Douglas & Lomason Co., Inc.*, 26 F.3d 1277 (5th Cir. 1994). These stray remarks are not enough to show discrimination. *Id.*

This court has read the statements that plaintiff alleges "allude" to gender discrimination in the work place. However, after reading those sections, the court finds that the evidence is not competent to withstand a motion for summary judgment. These stray statements are confusing, not directly on point, and do not indicate that Young experienced discrimination because of her gender. Additionally, other female officers did make it past the probationary period at the City of Sulphur Police Department. Thus, there exists no competent evidence to deny the motion for summary judgment on all remaining

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only *alleges* discrimination. No real *evidence* has been presented to raise a question of fact.

and pending issues. Therefore, this court will grant defendant's motion.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 15th day of March, 2000.

/s/ James T. Trimble, Jr.
JAMES T. TRIMBLE, JR.
UNITED STATES
DISTRICT COURT JUDGE

Supreme Court, U.S.
FILED
JAN 4 200

No. 00-732

IN THE

Supreme Court of the United States

BETHANY YOUNG,

Petitioner,

v.

CITY OF SULPHUR, LOUISIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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INTRODUCTION

This is the Brief in Opposition by the City of Sulphur, Louisiana, to the application by Ms. Bethany Young for a Writ of Certiorari to this Honorable Court. The District Court entered a F.R.C.P. Rule 56 dismissal and the United States Court of Appeals for the Fifth Circuit affirmed. Ms. Bethany Young has applied for a Writ of Certiorari to this Honorable Court for a review of the issues of the case.

ORGANIZATION OF THE BRIEF

This opposition of the City of Sulphur, Louisiana (the "City") is organized in the following fashion. The City first presents a brief procedural history which is followed by a recitation of the background facts. The City then presents a legal analysis supporting denial of the Writ Application. The City next sets forth a reply to the background facts presented by the applicant on a point by point refutation and analysis of the assertions made by the applicant in the background facts section in her Writ Application to this Honorable Court. Finally, the City provides a brief conclusion which contains a summary of the reasons supporting denial of Ms. Young's Writ Application.

PROCEDURAL HISTORY

Ms. Bethany Young filed this action against the City, and its police department, alleging that the City terminated her employment in violation of Title VII, 42 U.S.C. § 2000. The City filed a F.R.C.P. Rule 56 motion within the deadlines set by the District Court. On March 15, 2000, the District Court dismissed the case under F.R.C.P. Rule 56, with reasons assigned. Ms. Young took an appeal to the United

States Court of Appeals for the Fifth Circuit, citing *Reeves* in her reply brief to the court. The Fifth Circuit affirmed the District Court's summary dismissal of Ms. Young's claims. Ms. Young now seeks a Writ of Certiorari to this Honorable Court.

BACKGROUND FACTS: A BRIEF REVIEW OF BETHANY YOUNG'S EMPLOYMENT

Ms. Bethany Young presented background facts in her Writ Application to this Honorable Court. She failed to cite certain salient facts favorable to the City, and supported by the record of this case on appeal to the Fifth Circuit, and the undisputed facts supplied in support of the F.R.C.P. Rule 56 motion to the District Court. Other facts cited by Ms. Young in her application are not in the record at all.

The City of Sulphur maintains a policy of equal employment opportunity. It also maintains a policy of anti-discrimination and an internal grievance procedure. Ms. Young made no complaints to the City nor any of its representatives regarding any allegations of gender discrimination. She did not invoke the grievance procedures of the City regarding any allegations of gender discrimination or any other allegations whatsoever. Two weeks before she was terminated, Ms. Young was given and took the opportunity to speak to her superiors outside the chain of command about her problems in the department and as a special accommodation to her. Ms. Young requested and received further "ride along" training as a further concession to her. She testified that she, when given the opportunity, did not make complaints to the department about which she complains here.

Ms. Young complains that: (1) she was not properly trained, particularly in firearms, (2) requested further ride

along training, and (3) was provided an outdated policies and procedures manual. There is absolutely no evidence that the other officers, including male officers, received these things when she did not. On the training issue, she claims here that she was not provided training in firearms. Yet, she testified under oath that she told the department she knows how to operate a firearm. These positions are inconsistent.

Ms. Young has no personal knowledge whether gender was a factor in the terms and conditions of her employment with the City. She admittedly has no evidence, documentary or otherwise, of gender discrimination. Ms. Young was unable to provide any policies of the City that were violated by any of its members or her superiors. She acknowledged under oath and agreed that her employment with the City was "at will" and could be terminated by either party at any time, without cause and for any reason. She also acknowledged under oath and agreed that her employment with the City was contingent upon successfully completing a 90 day probationary period. Ms. Young was employed by the City for 89 days until her termination arising from numerous and serious violations of police department policy and her unsatisfactory performance during the probationary period. She violated police department policy: (1) by mishandling evidence, (2) by her failure to properly secure an abandoned vehicle, and (3) by falling asleep at the wheel of a police car at the intersection of a major highway with the engine running and the transmission in gear. She agreed under oath that she violated police department policy for falling asleep at the wheel of a police car under the described conditions, but failed to explain that she was sick, as she now does in the Writ Application. Ms. Young was further reprimanded for calling for back up from the sheriff's department before calling for back up from her fellow officers with the City.

She testified and agreed under oath that she knew about and understood the 90 day probationary period. She agreed that it was to determine if she could perform the duties of a police officer, and that she could be terminated for any reason. Ms. Young further testified that this was explained to her by Captain Keith Andrus, the same person that hired and then fired her.

Ms. Young further testified that she read and understood the policies and procedures of the police department. She agreed to them, including the proper handling of evidence, and testified that she violated these policies and procedures. In short, the District Court states it cogently when it ruled that "not only did Young fail to do her job of protecting the people of Sulphur, but she endangered the safety of the people of Sulphur."

All of the above facts are well documented and in the record of this case and were cited as undisputed facts in support of the F.R.C.P. Rule 56 motion and heavily supported by references to the supporting documentation to the F.R.C.P. Rule 56 motion and memorandum.

REASONS FOR DENYING THE WRIT: A SUBSTANTIVE LEGAL ANALYSIS

This Honorable Court has set standards and legal principles for a trial court to utilize in adjudicating a motion for summary judgment and in the context of employment discrimination cases. The Court has also formed and developed the burden of proof structure and applicable legal analysis through a series of cases including the most recent decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000).

From *McDonnell Douglas*[1] to *Burdine*[2] and *St. Mary's*[3] to *Reeves, supra*, this Honorable Court has developed a foundation to guide trial courts and appellate courts in their handling and review of specific cases.

Obviously, a "magic formula" cannot be developed or rotely applied and this Honorable Court has not issued or mandated inflexible absolutes. The dynamics of each case and the specifics of each trial and appellate record necessitate the entrustment of dispositive motion adjudication to the judges before whom the litigants appear. As recognized by this Honorable Court:

> Whether judgment as a matter of law is appropriate in any particular case will depend on a number of factors. Those include the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law.

Reeves at 2109.[4]

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1. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

2. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

3. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993).

4. The case at bar is presented in the context of a motion for summary judgment and the *Reeves* case is in the context of a motion for judgment as a matter of law. This Honorable Court, however, has recognized that the standards for granting each respective motion and the standards for review are analogous. *See Reeves* at 2110.

As such, the focus of any appellate review is not the legal terminology used by the trial judge in authoring his written ruling, but instead the factual record developed by the parties and the court and the legal analysis and frame-work applied under the guiding standards of proof and review.

In the present case, the District Court was presented with a Motion for Summary Judgment that was primarily supported by Ms. Young's own deposition testimony. A full and complete record was developed through deposition testimony of various fact witnesses and the parties established undisputed material facts.

With the material facts in hand, the District Court first addressed the plaintiff's establishment of a prima facie case and the defendant's assertion of legitimate, non-discriminatory reasons for employment termination. *See* Young's Pet. for Writ of Cert., App. "B" at 5-7. In this analysis and after finding Ms. Young had stated a prima facie case, the trial judge correctly recognized that the City articulated three (3) non-discriminatory reasons for termination.[5] At that point, the first two steps of the analysis were completed by the trial judge. In that second step (the City's burden of articulating non-discriminatory reasons), the City's burden was clearly met by expression of the three (3) reasons for termination. As stated by this Honorable Court, "[t]his burden is one of production, not persuasion . . ." *Reeves* at 2106 (citing *St.*

5. As expressed by the District Court: "Defendant articulates three (3) distinct reasons for the termination. First, Young fell asleep in a patrol car, at a busy intersection, with the engine running, and the transmission in gear. Second, she was cited for failure to secure a vehicle of an arrestee. Finally, she was cited for mishandling evidence." *See* Young's Pet. for Writ of Cert., App. "B" at 6.

Mary's Honor Ctr., 509 U.S. at 506). Thus, the trial court satisfied the intermediary evidentiary burdens and, at that point, turned its analysis to the ultimate issue of the plaintiff's burden of proving pretext and unlawful discrimination.

The trial judge methodically analyzed the facts developed through the Motion for Summary Judgment record. In reviewing the facts in a light most favorable to Ms. Young, the trial judge considered the disputed facts asserted by her and determined which material facts were undisputed. The trial judge also critically tested the termination reasons advanced by the City. In this analysis, the District Court states:

> Young argues that she fell asleep because she was sick, on medication, and it was an overnight shift. She went to work because she understood Captain English to say that people shouldn't miss work because they were sick. Young denies the allegation that she failed to secure the vehicle. No explanation is given for the mishandling of evidence by plaintiff.
>
> Since Young does not appear to contest the mishandling of evidence, this provides a legitimate non-discriminatory reason for terminating the plaintiff. Additionally, even though plaintiff is disputing the first two reasons as pretext for gender discrimination, Young fails to provide any evidence that the termination was *because of* her gender. The mere fact that she might have been wrongly terminated is not

> enough. Young must present evidence that she was wrongly terminated *because of* her gender.
>
> In fact, Young, herself, provides a non-gender based reason why Captain English did not like her. In her deposition Young stated that Captain English did not like her because he did not like her spouse, Donald DeLouche, who worked for the Sheriff's Department. Even if Captain English managed to get Young terminated, Young admits that Captain English's dislike of plaintiff stems from whom her spouse was, not the plaintiff's gender.

See Young's Pet. for Writ of Cert., App. "B" at 6-7.

Not only did the District Court find that one of the articulated reasons was not disputed by Ms. Young in the Motion for Summary Judgment evidence and record, but Ms. Young, herself, provided a non-discriminatory reason or motivation for the alleged employment actions of the person she labels as the "protagonist."[6]

The trial judge's written ruling and analysis (based on the actual record and evidence) clearly demonstrate that facts favorable to Ms. Young were considered and that appropriate inferences were afforded in her favor. The District Court does not use or even cite a "pretext plus" standard and there is simply no indication from the District Court's factual and

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6. Ms. Young, in her brief, labels Captain English as the "protagonist." It is undisputed, however, that Ms. Young was hired by and fired by Captain Keith Andrus. Captain Andrus, as the second highest ranking officer under the Chief of Police, is the person who makes hiring and termination decisions.

legal analysis that it did not effectuate the spirit and rationale behind the applicable burden of proof and standard of review.[7]

The City submits that Ms. Young failed to carry her burden of proving pretext. Even if she did and even if certain inferences yield in her favor, the analysis and inquiry do not end there. As stated by this Honorable Court:

> This is not to say that such a showing by the plaintiff will *always* be adequate to sustain a jury's finding of liability. Certainly there will be instances where, although the plaintiff has established a prima facie case and set forth sufficient evidence to reject the defendant's explanation, no rational fact finder could conclude that the action was discriminatory. For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, non-discriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred . . . To hold otherwise would be effectively to insulate an entire category of employment discrimination

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7. Although *Reeves* was decided after the trial court's ruling in the case at bar, the ruling is nevertheless "*Reeves* compliant" in light of the factual and legal determinations made by the court. Moreover, the United States Court of Appeals for the Fifth Circuit had the benefit of the *Reeves* case when it affirmed the granting of summary judgment and there is absolutely no indication that it did not follow or refused to follow the applicable standards established by this Honorable Court.

> cases from review under Rule 50, and we have reiterated that trial courts should not "treat discrimination differently from other ultimate questions of fact" . . .

Reeves at 2109 (citations omitted).

In the present case, Ms. Young did not dispute one of the articulated reasons for termination (mishandling evidence). Although she attempts to explain another reason (falling asleep at the wheel of a patrol car with the engine running, in gear and at an intersection), such "explanation" can be rejected since it does not excuse the endangerment that she created to the public for whom she was entrusted to serve and since it did not involve any gender bias. Finally, Ms. Young provided the District Court with a gender neutral reason related to motivation. In this regard, the District Court noted:

> Assuming that Captain English did say the things alleged and had her terminated for the two false reasons, there is just not any proof that he did these things *because of* her gender. He might have disliked her, but termination for dislike is not a cause of action. Unless he disliked her and fired her *because* she was a woman. Therefore, because no evidence has been presented to raise a question of fact, this court shall grant the defendant's Motion for Summary Judgment. (Footnotes Omitted).

Young's Pet. for Writ of Cert., App. "B" at 7-6.

Based on the foregoing, it is clear that the court considered numerous factors in its analysis and that it utilized

a proper and sound methodology in its ruling and decision. As established by this Honorable Court, the ultimate question is whether or not a plaintiff's termination was the result of intentional discrimination. *Reeves* at 2106 (citing *Burdine*, 450 U.S. at 252-53). The District Court, as affirmed by the Court of Appeals, correctly found that Ms. Young did not demonstrate that any asserted pre-textual reasons were intended to mask gender discrimination. Ms. Young simply failed to produce any evidence upon which a reasonable trier of fact could base a conclusion that gender was a determinative factor in the City's decision to fire her. After a thorough and comprehensive review of the record and deposition testimony, the trial court captured the essence of this case by stating, in Footnote 4 of its Memorandum Ruling, as follows:[8]

> Although plaintiff may argue that the reason for Young's dismissal is a question of fact, in this case this is not true. Young only *alleges* discrimination. No real *evidence* has been presented to raise a question of fact.

RESPONSE TO BACKGROUND FACTS OF APPLICANT: A POINT BY POINT CRITIQUE

The recitation by the applicant of background facts is, in places, not supported by the record on appeal. In other places the background facts section of the application contains argument and not facts. The purpose of this section is to address many of the factual points raised by Bethany Young in her Writ Application.

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8. Young's Petition for Writ of Certiorari, App. "B" at p. 7, footnote 4.

Bethany Young suggests that the F.R.C.P. Rule 56 Motion was filed at the eleventh hour before trial. The record will support that the motion was filed within the dispositive motion deadline and after the taking of numerous depositions. The motion included references and submitted copies of Ms. Young's own words under oath, most of which supports the motion and the ultimate dismissal by the District Court. That testimony is in the record of this case, and constitutes the fundamental basis for the granting of the F.R.C.P. Rule 56 dismissal by the District Court. The District Court heavily relied on Ms. Young's testimony in it written reasons.

While all of Ms. Young's aspirations and reported background and experience in law enforcement are laudable and admirable, there are other aspects of law enforcement for which she, despite good intentions, could not fulfill and which are unrelated to gender. None of the reasons given for her termination are gender based and all of the employment actions by the city were gender neutral. Young refers to other job offers from other law enforcement agencies but the record does not support that assertion.

Young, with suspicion, questions her termination having been made on the second to last day of her 90 day probationary period. She suggests that the termination was hurriedly made to deny her Civil Service protections and to sweep her out of the department without vesting her with such protections. Her probationary period was 90 days, a fact she well knows. Giving her all benefit of the doubt, Bethany Young was given the entire probationary period to demonstrate her ability as a rookie law enforcement officer despite the succession of violations for which each one could have resulted in immediate termination. Each violation posed a risk to the general public or members of the department.

Yet, the City gave her all benefit of the doubt by refraining from firing her until the confluence of violations made it clear to the person that hired her that she should not be a police officer. Arguably, Bethany Young was given more consideration than a male officer would have received under the same or similar circumstances.

Ms. Young complains that the 89 day period was "tumultuous." If it was full of tumult, it was because of her own actions or inactions and not to clandestinely undermine her career because she is female. She did not follow procedure, she violated the very rules she read and understood, she spent an excessive amount of time with officers from another agency, she left a weapon exposed to open access, she fell asleep in a squad car on duty with the engine running and transmission in gear, she called for backup from another agency without first calling for her own department and outside of police protocol and she continually demanded treatment no other officer was getting. Bethany Young appears to erroneously argue that she was discriminated against because she did not receive preferential treatment.

Ms. Young's husband was a long time detective with the Calcasieu Parish Sheriff's Department and her continual desire for preferential treatment can be explained with this fact alone. She agreed that her training was the same as the men and she also received more training (beyond what others routinely receive) upon request as exemplified by the granting of additional "ride along" training.

Ms. Young argues that the officers could not speak the words they wanted to speak. Even if true, this is not evidence of discrimination. In fact, it demonstrates professionalism and courtesy by them and awareness of their demeanor and

that she complains she was placed in a unit by herself and that she was assigned graveyard shifts. These were not all the time, by her own admission, and are all part of a rookie officer's duty. It is apparent from these complaints that she was seeking treatment different from the others in the department. In one instance, she boasts of experience and background in law enforcement, yet in another breath she complains that she is not getting adequate training. Her factual and legal positions are not consistent and, at times, are contradictory. She places herself above others in qualifications but claims gender based discrimination when she does not get what she desires.

Bethany Young claims she was set up for failure from the moment she entered the department. This argument is specious because it ignores all other hypotheses on the probable reasons for her failure to be confirmed in her position. When it came time to perform the most basic tasks of an officer, ones described in the procedures and policy manual, she could not perform those duties to the satisfaction of the very officer who hired her. This argument is flawed because she insists that she was set up to fail, witness the fact that she did fail. This is her argument: the fact must be true because of the result. The argument ignores other facts that point to different conclusions.

Ms. Young invokes the terms of a purported consent decree arguing that the city agreed to hire women. The decree is not in the record and the casual allusion to a consent decree in a footnote raises questions about this Writ Application and the necessity to go beyond the record. If she intended to argue the consent decree, federal court rules require that she should have made it a part of the record so that this court, and other courts, can consider it among the other matters in

the record for this analysis. Bethany Young's omission on this alleged fact highlights its irrelevance and lack of foundation for the actual issues presented.

She asserts that spending time with sheriff's department personnel was an activity to "protect and serve" the public. It is argued by the City that this was an attempt by her to sidle up to those under the supervision of her husband and not for any exalted reasons expressed in this application. This is yet another reason that she was not doing well during her 90 day probationary period. Any attempt by Ms. Young to place a good face on the fact that during duty hours she made a practice to "hang out" with sheriff's department deputies is another specious argument. The fact that she made a practice to spend most of her time with sheriff's deputies, those under the direct supervision of her husband, and call them for backup was a matter discussed with her but ignored by her. This also raises questions about her fitness as an officer. She often pre-empted instructions of supervisory personnel with that of her own wishes: to spend more time with those who work for her husband outside of her department and agency.

Ms. Young alleges random acts of speech and stray remarks which do not constitute discrimination and are not indicative of discrimination. It was admitted that she was referred to as a "khaki back lover" by some of her fellow officers. Her boyfriend (now husband) was a high ranking sheriff's department official. She spent many hours on duty with sheriff's deputies. They wear khaki uniforms as opposed to the blue city police uniforms. This is a non-gender based reference attached to her by her own actions and not by the

actions of anyone else. In fact, she testified that she does not consider it to be a derogatory term.[9]

Despite Ms. Young's "factual" presentation, there is no evidence in the record that other officers were subjected to adverse treatment or were chastised for helping her to succeed. This is yet another attempt to refer to matters not of record.

Bethany Young argues in her factual background that she suffered gender based discrimination because of her relationship with her husband. She argues that it "seems" that this relationship and the adverse reaction of others is "inherently gender based." She fortifies this argument by stating that it is so in the absence of any evidence that male employees were similarly treated. There is no factual or legal assumption that the relationship is inherently gender based. The argument is that it did not happen to males, therefore it must be gender based discrimination. This argument does not make the actions of the City "inherently gender based."

Ms. Young argues that Officer Patrick Johnson was cautioned about his interest in Bethany Young. She uses this cautionary instruction to Johnson as an example of how those who sought to help her were subjected the same treatment. The alleged chastisement of Patrick Johnson is not gender based simply because he was spending too much time around a female officer. He was admonished on what her training should be and who it should come from. To suggest that this

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9. The deposition of Captain DeLouche, Young's husband, was taken. Although the deposition is not a part of this record it must be noted that DeLouche commented on the reference to his wife as a "khaki back lover." By his own admission, he was not offended by the expression.

is gender based discrimination is another specious argument. The same argument was made with the deposition of David Fontenot. This is simply not supported by the facts in the record.

Ms. Young suggests that the City kept policies and procedures hidden from her. In her deposition, however, she concedes that she read and understood the policies and procedures of the department. Captain English's telling her of his pet peeve of officers failure to show up for work caused her to come to work sick and then to fall asleep in a car which was on a busy street, engine running and transmission in gear. According to Ms. Young, this violation was the fault of Captain English, Ms. Young fails to take the responsibility for her own actions and chooses to blame this matter on others. His pet peeve applied to everyone male or female, not just to her and she was given the benefit of notice of this.

All of the reasons for Ms. Young's termination were given to her at the time of her termination. They were not an afterthought, nor a lark. The termination was after an 89 day period of violations and policy breaches. Nor was Ms. Young terminated to avert civil service protections. Her termination on the 89th day of probation was after an attempt to give her the full use of the probationary period. Had they fired her when she committed the first violation, or the second, or the third, she would no doubt complain that she was denied her chance to demonstrate her qualifications to be an officer by the use of the entire 90 day period. The first 90 days is a probationary period, a time of much scrutiny, when circumspection is the order of the day for any new employee. Ms. Young apparently felt that she was above that scrutiny.

There is no evidence in the record to suggest that Captain Phil English could not explain why he could move a car without keys. He explains that the car was moved, but cannot remember precisely how it was moved. This is yet another attempt of the plaintiff to supply facts not in the record.

The background facts suggest further facts not in the record. With regard to the argument that the same person that hired her also fired her, the Writ Application suggests that the City knew and maneuvered through case law creating certain legal presumptions and the legal analysis that a court would apply in testing the termination. No such evidence exists in the record. She further asserts that when they could not discourage her from pursuing her career, they concocted trivial reasons to fire her. This is not supported by the record either.

CONCLUSION

The City respectfully submits that Ms. Bethany Young's Petition for Writ of Certiorari should be denied. The factual determinations of the District Court are unequivocally supported by the record and the legal analysis applied by the District Court, as affirmed by the Court of Appeals for the Fifth Circuit, is substantively sound.

The City further submits that the ruling of the United States Court of Appeals for the Fifth Circuit, which affirmed the District Court's findings and conclusions, is not in conflict with decisions of other circuits on any salient matter and the United States Court of Appeals for the Fifth Circuit has not adjudicated and important critical federal question in a manner which conflicts with relevant decisions of this Honorable Court.

Moreover, Ms. Young's Writ Application reveals that she is now attempting to dispute, after the fact, factual findings made by the District Court. Such an attempt by Ms. Young should not invoke a review by this Honorable Court.

Finally, Ms. Young's apparent claim that the United States Court of Appeals for the Fifth Circuit misapplied an established rule of law is without support and her supposition about what substantive analysis was or was not applied is insufficient to warrant review by the United States Supreme Court.

In summation, the District Court developed a comprehensive factual record, it made findings of undisputed material facts and found that, in the present case, summary judgment was proper. The United States Court of Appeals for the Fifth Circuit reviewed the District Court record, considered the legal analysis and arguments of the parties (including the analysis presented by Ms. Young of the *Reeves* decision) and concluded that the District Court's ruling was factually and legally proper and correct.

Based on the foregoing, City of Sulphur, Louisiana respectfully requests that Ms. Bethany Young's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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